In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 768

BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY, a Corporation, petitioner

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

While we believe that the decision of the court below was correct and that there is no conflict of decisions, we do not oppose the granting of a writ in this case. We are informed by the Interstate Commerce Commission that under its original construction of Section 204 of the Transportation Act of 1920 (see Pet. 2), the sum of approximately $3,000,000 was paid to seventy-four carriers, including the petitioner. The court below has held that the United States is entitled to recover the sum paid to petitioner because this construction of the statute by the Commission was erroneous, as the

Commission itself subsequently concluded. (See Pet. 2.) We are also informed by the Interstate Commerce Commission that there are in its files approximately sixty claims involving nearly $6,000,000, which are similar to the claim of the petitioner, and upon which the Commission has refused payment. If the decision of the court below is incorrect these claims would undoubtedly be pressed by the carriers involved.

As the amount involved in cases turning upon the construction of Section 204 is large, and establishment of the other claims may involve extensive litigation in various circuits unless the question is finally settled by a decision of this Court, we believe that the case merits review and, therefore, we do not oppose the granting of a writ of certiorari herein.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

APRIL, 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1933